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73-1864

file

12 April 1973

MEMORANDUM FOR: Office of the General Counsel

ATTENTION:

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SUBJECT: Request for Legal Opinion

1. In October 1950 the Legal Staff, in response to a request from the Chief of the CIA Library, provided an interpretation of the extent to which the Central Intelligence Agency was obliged to comply with the various statutes governing the disposal of government records. (A copy of the memorandum from the Legal Staff is attached.) The general tenor of the Legal Staff's response was that the Agency should comply unless compliance would result in the unauthorized disclosure of intelligence sources and methods.

2. It is requested that your office elaborate on the 1950 interpretation. Specifically, is the Agency legally competent to order the destruction of its records without the prior approval of the Archivist of the United States, or can this be done only in instances where the act of obtaining approval would in itself constitute an unauthorized disclosure of intelligence methods and sources?

3. By way of background, the National Archives and Records Service promulgates General Records Schedules for certain categories of records common to most Federal agencies, e.g., personnel and fiscal records. The General Records Schedules specify, i.e., the retention periods for the records involved and constitute a blanket authorization to destroy any records corresponding to those covered by the Schedule, unless, of course, destruction is not authorized. The Agency's policy is to comply fully with the General Records Schedules.

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4. Another method of obtaining authorization for the destruction of government records is through the submission of a Records Control Schedule, a document which lists all of the records produced or received and maintained by a government organization (usually at the bureau level) and specifies the disposition to be accorded each record category. Once a Records Control Schedule is approved by the National Archives and Records Service, it serves as a continuing authorization for the disposal of records. The Agency has Records Control Schedules, but they are not submitted to the National Archives for approval.

5. To obtain authorization for the destruction of records not covered by the General Records Schedules or by Records Control Schedules, agencies submit disposal lists (Standard Form 115) to the National Archives and Records Service for approval. (In theory, these are one-time approvals, but it seems to be a common practice for government agencies to regard them as precedents for subsequent destruction actions.) The Agency has submitted SF 115s in a rather hit-or-miss fashion; sometimes we do and sometimes we don't. The submission of an SF 115 is usually preceded by a telephone call to the Records Appraisal Division of the National Archives, whereby an assurance is obtained in advance that approval will be granted. Samples of the documents affected are not provided the National Archives, although this is the normal practice for other agencies.

6. Government documents are not to be destroyed without prior authorization, and since 1970 the Archivist of the United States, acting as the agent of the General Services Administrator, has been the official responsible for making these judgments. It would, however, be difficult or impossible for the Agency to always obtain approvals. We are enjoined against making unauthorized disclosures of intelligence methods and sources, and, for certain types of compartmented information, none of the staff of the Records Appraisal Division has the requisite clearances. Moreover, there is the general provision of the Federal Records Act of 1950 to the effect that nothing in the act shall impair or affect any authority of the Central Intelligence Agency.

7. Records disposal decisions should be based on a thorough knowledge of the total documentation produced by an agency, yet it is impossible, in view of the restrictions, for an appraisal archivist

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at the National Archives to acquire such knowledge. It would make life simpler for Agency records managers if, in determining the disposition of records not covered by the General Records Schedules, they were required to seek the advice of the National Archives only when they felt the need for guidance. Some Agency official, of course, and logically this would be the Agency Records Management Officer, should exercise final approval authority.

8. Incidentally, why is the attachment classified?



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Special Assistant for Information Control

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